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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact: \_\_\_\_\_, ID No. \_\_\_\_\_

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Refer Reply To:  
CC:PSI:B01  
PLR-114765-12  
Date:  
September 24, 2012

## LEGEND

$$\underline{X} =$$
D1 =D2 =

Year 1 =

Year 2 =

Year 3 =Year 4 =

Shareholder =

State =

Dear \_\_\_\_\_ :

This responds to a letter dated March 30, 2012, and subsequent correspondence, submitted on behalf of X, requesting relief under § 1362(b)(5) of the Internal Revenue Code.

## FACTS

According to the information submitted, X was incorporated on D1 under the laws of State. X intended to be treated as an S corporation for Federal tax purposes effective D2, but the proper election was not timely filed.

## LAW AND ANALYSIS

Section 1362(a) provides that a small business corporation may elect to be an S corporation. Section 1362(b) provides the rule on when an S election will be effective.

Section 1362(b)(2) provides that if an S election is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation for the year in which the election is made. If the election is made after the first two and one-half months of a corporation's taxable year, then the corporation will not be treated as an S corporation until the taxable year after the year in which the S election is made.

Section 1362(b)(5) provides that if no election is made pursuant to § 1362(a), or, if made, the election is made after the date prescribed for making such an election, and the Secretary determines there was reasonable cause for the failure to timely make the election, then the Secretary may treat such election as timely made for such taxable year and effective as of the first day of that year.

X did not file a timely election to be treated as an S corporation under § 1362(a) effective D2. X has, however, established reasonable cause for not making a timely election and is entitled to relief under § 1362(b)(5).

## CONCLUSION

Based solely on the facts submitted and representations made, and provided that X otherwise qualifies as a subchapter S corporation, we conclude that X will be recognized as an S corporation effective D2. As conditions of this ruling –

1) X must file Form 1120S (U.S. Income Tax Return for an S Corporation) for Year 1, Year 2, Year 3, and Year 4, and Shareholder must file amended Forms 1040 for those years as needed to correctly reflect items from X. For all relevant years, Shareholder must include the separately and nonseparately computed items attributable to his X shares in his income as provided in § 1366, make adjustments to the stock basis of those shares as provided in § 1367, and take into account any distributions with respect to those shares as provided in § 1368.

2) X must file Form 2553, effective D2, with a copy of this letter attached, with the appropriate service center no later than 120 days from the date of this letter.

If these conditions are not met, this ruling is null and void.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied concerning whether X otherwise qualifies as an S corporation for federal tax purposes.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer's authorized representative.

Sincerely,

Joy Spies

Joy Spies

Senior Technician Reviewer, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes